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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2001-01:

WALLULA GENERATION, LLC

WALLULA POWER PROJECT

**SETTLEMENT AGREEMENT
BETWEEN WASHINGTON STATE
DEPARTMENT OF FISH AND
WILDLIFE AND WALLULA
GENERATION, LLC**

CORRECTED - ERRATA

I. INTRODUCTION

A. Parties

Wallula Generation, LLC (Wallula) is seeking a Site Certification Agreement (SCA) from the Energy Facility Site Evaluation Council (EFSEC) to construct and operate the proposed Wallula Power Project (Project).

Washington Department of Fish and Wildlife (WDFW) has a mandate to preserve, protect, manage, and perpetuate the state's fish and wildlife resources including habitat. WDFW is a party to the site certification adjudication before EFSEC.

B. Purpose And Intent

The Project consists of a 1,300 MW combined-cycle combustion gas turbine generation facility and associated facilities, including a 4.6-mile industrial makeup water supply pipeline

1 and a 5.9-mile natural gas pipeline. Through this Agreement, WDFW and Wallula set forth
2 the obligations and restrictions that the Parties intend to have incorporated into the SCA as
3 conditions for the Project should EFSEC recommend that the Project be certified. The
4 obligations and restrictions set forth in this Agreement relate to fish, wildlife, and habitat
5 resources that will be affected by construction and operation of the Project facilities at the
6 Project site and the construction and operation of the approximate 4.6-mile makeup water
7 supply pipeline and 5.9-mile natural gas pipeline, as these components are proposed at the
8 time of entry of this Agreement. The Parties agree to amend this Agreement, as necessary, if
9 the proposed Project changes substantially from that proposed at the time of entry of this
10 Agreement. The Agreement does not address issues that may be raised at EFSEC or non-
11 EFSEC proceedings outside the adjudicative hearing or other Project impacts, if any.
12

13 C. Resolution Of Issues

14 Wallula has undertaken preliminary site impact assessments to identify the primary wildlife
15 and wildlife habitat impacts expected from construction and operation of the Project facility,
16 makeup water supply pipeline and natural gas pipeline. The Parties agree that not all wildlife
17 and wildlife habitat impacts may be known and, therefore, the Agreement contains
18 commitments to address currently expected specific wildlife and wildlife habitat impacts and
19 a commitment to principles of impact assessment and mitigation for potential future
20 unknown impacts.
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22 II. WALLULA'S COMMITMENTS

23 A. Wallula's Commitments

24 Wallula agrees that the mitigation measures identified in this Settlement Agreement shall be
25 implemented if construction of the proposed electrical generation project proceeds pursuant
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1 to an SCA. The parties agree that Wallula will comply with any SCA requirements that set
2 stricter standards regarding protection of fish, wildlife or their habitat, than those contained in
3 this agreement.
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7 **B. Application For Site Certification**
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9 Wallula agrees that the applicable mitigation measures identified in the following sections of
10 its Application For Site Certification, dated August 19, 2001, revised on or about October 17,
11 2001* shall be incorporated into the SCA as binding commitments: Section 2.8 Wastewater
12 Treatment; Section 2.10 Surface Water Runoff; Section 2.14 Construction Methodology;
13 Section 3.1 Earth; and Section 3.4 Plants And Animals.
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19 **C. Impact Assessment And Mitigation**
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21 The Parties agree that the principles of impact assessment that have been applied to the
22 currently expected impacts and that shall be applied to all unforeseen impacts are, in
23 descending order of importance, 1) avoid the impact wherever possible, 2) minimize the
24 impact, 3) provide on-site, in-kind mitigation, and 4) provide off-site compensatory
25 mitigation.
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31 **D. Specific Protection and Mitigation Actions**
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33 1. Project Proposal.
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35 For the purposes of this Settlement Agreement, the Parties agree to characterize the
36 Project as impacting both lands at the Project site and in several utility corridors. Protection
37 and mitigation actions for the Project site and the utility corridors are addressed below.
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41 2. Project Site.
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43 For the purposes of this Settlement Agreement, the parties agree to characterize the
44 project site as two parcels; 1) the first being an approximate 153 acre parcel that will be
45 directly affected by grading and project construction activities; and 2) the other being the
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1 approximate 22 acre parcel containing the existing wetlands, and called the Habitat Reserve
2 Area. Wallula agrees to protect and mitigate the impacts of the Project with different actions
3 on these two parcels as described below. Mitigation for wildlife impacts that are the result
4 of the time necessary to restore disturbed wildlife habitat is included in the measures
5 identified in Section II.D.3.
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10 3. 153 Acre Project Site.
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12 Wallula agrees to mitigate the impacts resulting from construction and operation of
13 the Project on the 153 acre project site by taking the following actions: a) plant and maintain
14 approximately 74 acres of dryland cultivated native grass habitat with a component of native
15 shrubs and forbs on the project site; b) place a perpetual conservation easement upon the
16 approximate 640 acre Benton County property, Section 35, T7N, R30E, in favor of the
17 Department of Ecology, a local land trust, or other equivalent entity sufficient to satisfy the
18 requirements for the permanent protection of wildlife habitat and for the permanence of air
19 emission PM-10 offsets; c) seed, reseed, or plant the approximate 640 acre Benton County
20 (PM 10) property in dryland cultivated native grass habitat with a component of native shrubs
21 and forbs; d) take actions necessary to control livestock grazing on the approximate 640 acre
22 Benton County property, Willamette Meridian; e) actively support WDFW funding requests
23 to fund the acquisition of native shrub habitat; f) provide at the time of Project financial
24 closing (Closing), Fifty Thousand Dollars (\$50,000.00) to the United States Fish and Wildlife
25 Service, at the McNary National Wildlife Refuge for wetland and riparian enhancement
26 activities under the USFWS Wallula Wetlands and Riparian Project, Phase II, located along
27 the Walla Walla River in Section 30, T7N, R32 E; and g) provide at the time of Closing,
28 Twenty Five Thousand Dollars (\$25,000.00) to be apportioned between Dr. Gary Piper at
29 Washington State University and Dr. Linda Wilson at University of Idaho. The funding to the
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1 two researchers will be used to assist with the development of biological control agents,
2 which will ultimately benefit weed control efforts on the site and on surrounding ownerships.
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4 Each of these actions is more fully described below:
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- 6
- 7 a) Wallula agrees that after construction of the Project is complete Wallula will
8 replant approximately 74 acres in dryland cultivated native grass habitat with a
9 component of native shrubs and forbs.** Prior to commencing construction
10 of the Project, Wallula agrees to develop a landscaping and revegetation plan
11 in consultation with the Energy Facility Site Evaluation Council (EFSEC) and
12 WDFW, in order to be prepared to replant the Project site in an expeditious
13 manner. Wallula will also monitor the survival of the Project site vegetation
14 as described in E.2. below. Failure to meet performance requirements will
15 require action to provide alternative mitigation.
16
- 17 b) Prior to commercial operations, Wallula will place a perpetual conservation
18 easement upon the Benton County property in favor of the Washington
19 Department of Ecology, a land trust that has adopted the Standards and
20 Practices of the Land Trust Alliance, or other equivalent entity sufficient to
21 satisfy the requirements for the permanent protection of wildlife habitat and
22 for the permanence of air emission PM-10 offsets, required under the
23 Prevention of Significant Deterioration (PSD) permit to be issued by EFSEC
24 as part of the SCA. In addition, Wallula will take the necessary steps to
25 perfect the conservation easement.
26
- 27 c) Wallula agrees to seed, reseed, or plant the approximate 640 acre Benton
28 County (PM 10) property, as needed, to establish dryland cultivated native
29 grass habitat with a component of native shrubs and forbs. Approximately
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1 600 acres of dryland wheat located in T 7 N, R 30 E, Section 35 of Benton
2 County, Washington, will be seeded with native grass, shrub, and forb species
3 using a seeding mix that is consistent with the measures identified in Section
4 E. Wallula will install a guzzler on the property to provide water to wildlife.
5 Wallula will enroll the 640 acre property in WDFW's Public Access Program
6 to provide controlled public access for viewing and hunting of wildlife.
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12 d) Wallula agrees to take actions necessary to control livestock grazing on the
13 approximate 640 acre Benton County property. Specific, on-site wildlife
14 habitat improvement projects will be the only authorized use for livestock
15 grazing.
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17 e) Wallula agrees to actively support WDFW funding requests for the acquisition
18 of native shrub habitat, specifically the McWhorter property in Benton
19 County, Washington.
20
21 f) Wallula agrees to provide at closing, Fifty Thousand Dollars (\$50,000.00) to
22 the United States Fish and Wildlife Service, for wetland and riparian
23 enhancement activities on the Walla Walla River within the McNary National
24 Wildlife Refuge. With this contribution towards the Wallula Wetlands and
25 Riparian Project Phase II, Wallula will become a 1/8th partner in the Phase II
26 activities. Wallula's contribution will result in creation of 686 feet of high-
27 flow stream channel, creation of 13 acres of seasonal wetlands associated with
28 the high-flow channel, and enhancement of 16 acres of riparian corridor and
29 bottomland habitat.
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31 g) Wallula agrees to provide, at closing, Twenty Five Thousand Dollars
32 (\$25,000.00) to be apportioned between Dr. Gary Piper at Washington State
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1 University and Dr. Linda Wilson at the University of Idaho. Those funds will
2 be used to assist with the development of biological control agents, which will
3 ultimately benefit weed control efforts on the site and on surrounding
4 ownerships.
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9 4. Habitat Reserve Area.
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11 Wallula will prepare a final clearing and grading plan and a final landscaping and
12 revegetation plan that includes protection of a Habitat Reserve Area along the western edge
13 of the Project site. Delineated wetlands and wetland buffers (as described in Exhibit 3.4.2.1-
14 2 Wetland Delineation Ratings, And Assessment of Functions And Values Report of the
15 ASC) and adjacent upland habitats within the Habitat Reserve Area will be protected from
16 ground disturbance during construction and operation of the Project. Limited ground
17 disturbance will be allowed only as necessary to accomplish weed management objectives
18 within the Habitat Reserve Area.
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27 To monitor and protect wetland hydrology, Wallula will install a staff gage in the
28 deepest portion of the wetland complex and regularly monitor water level changes in the
29 wetland. Wallula will use its best efforts to secure authorization to use the South Columbia
30 Irrigation District water right or adjacent domestic water well for the purposes of maintaining
31 a minimum seasonal water level in the Habitat Reserve Area. If dewatering of the wetlands
32 occurs, Wallula will investigate alternative mitigation options. WDFW and Wallula
33 acknowledge that the U.S Highway 12 4-lane widening project may adversely affect the
34 wetlands in the Habitat Reserve Area due to no fault of Wallula. WDFW agrees that Wallula
35 will not be held accountable for habitat loss due to the U.S. Highway 12 4-lane widening
36 project.
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1 5. Utility Corridors.

2 As part of the development of the generation facility, Wallula will construct and
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4 operate a water pipeline from the ten existing wells on the Boise Cascade Corporation
5 property. Additionally, Wallula will cause to be constructed and operated a natural gas
6 pipeline to the Project site. Construction of these pipelines will cause disruption to existing
7 vegetation and may cause wildlife impacts. Wallula agrees to mitigate the impacts of the
8 construction of those pipelines by reseeding the pipeline corridors and restoring the disturbed
9 lands to dryland native grasses consistent with the revegetation success criteria identified in
10 the monitoring and performance standards section of this document. Sagebrush seed will be
11 included in the revegetation mix but Wallula will not guarantee shrub establishment, because
12 the right-of-way will require vehicle traffic for inspection and maintenance and because
13 future land use on the right-of-way, most of which is zoned industrial, will not be under the
14 control of Wallula. Agricultural lands that are cleared for installation of the pipelines will be
15 replanted into agricultural crops at the discretion of the landowner(s).

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29 **E. Restoration, Stabilization And Revegetation**

30 1. Implementation Standards.

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32 a) A Revegetation And Landscaping Plan will be developed for the
33 project site and other areas to be affected by construction, and will be
34 submitted to EFSEC at least 90 days prior to construction. The plan
35 will contain specific species mixes, seeding rates, site preparation, and
36 planting specifications. This plan will be developed in consultation
37 with plant materials specialists from the Natural Resources
38 Conservation Service's Pullman, Washington, Plant Materials Center
39 and WDFW shrub-steppe specialists.
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- b) Native plant species will be used for restoration, revegetation and landscaping activities. Non-invasive species of non-native plants may be used in situations where no native species are well-suited to achieving the mitigation objective, such as erosion control on extremely dry and/or sandy sites subject to vehicle traffic.
 - c) Weed control techniques will be implemented on all lands identified in this agreement for the life of the Project in accordance with Walla Walla County and Benton County Weed Board policies. Properties owned by Wallula will be available for testing and development of biological control agents that are appropriate for the weed species found on site.
 - d) All straw (bales or loose) and hydro-mulch will be certified as weed-free.
 - e) Avoidance areas will be established for all sensitive plant and wildlife occurrences in or near the construction impact zone. Metal or other strong stakes connected by highly visible fencing will identify the avoidance areas with flagging used to increase visibility, as appropriate. Avoidance areas will be marked prior to construction in an area and will be maintained until construction activities have been completed. Markers will be removed when construction in the area is complete and all construction equipment has been removed.
 - f) A qualified biological monitor, or their qualified designee, will inspect the Project site prior to and during construction each day that

1 undisturbed soil is disturbed to ensure that avoidance areas are
2 properly marked and to monitor observance of the avoidance areas.
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5 g) Revegetation will be performed as soon as possible after completion of
6 construction to prevent soil erosion and establishment of weeds.
7 Temporary erosion control methods, both physical and biological, may
8 be used to protect soils until the proper planting season, typically late
9 fall and winter.
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12 h) Disturbed soils on the project site and pipeline laterals will be
13 revegetated with a mixture of native grass species. Recommended
14 species include:
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- 16 • Sherman's big bluegrass (*Poa ampla*)
- 17 • Sandberg's bluegrass (*Poa secunda*)
- 18 • Indian ricegrass 'Nezpar' (*Oryzopsis hymenoides*)
- 19 • Bluebunch wheatgrass 'Secar' (*Pseudoroegneria spicata* ssp.
20 *spicata*)
- 21 • Thickspike wheatgrass 'Schwendimar' (*Agropyron dasystachyum*)
- 22 • Basin wildrye 'Trailhead' (*Elymus cinereus*)
- 23 • Needle-and-thread (*Stipa comata*)

24
25 Seed of native forb species and sagebrush may be added to the grass
26 mix. Suggested species include yarrow (*Achillea millefolium*) and
27 Lewis' flax (*Linum perenne* ssp. *lewisii*). Sagebrush seed will be
28 added to the seed mix for the pipeline laterals. On the Project site
29 Wallula will establish dryland cultivated native grass habitat with a
30 component of native shrubs and forbs by including native forb and
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1 sagebrush seed in the planting mix with the native grasses. If
2 necessary, shrubs and forbs will be over planted into the successfully
3 established native grasses. This is expected to occur prior to the third
4 growing season. Big sagebrush (*Artemisia tridentata*) will be the
5 primary species planted; other suggested species include:
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- 10 • Green rabbitbrush (*Chrysothamnus viscidiflorus*)
- 11 • Gray rabbitbrush (*Chrysothamnus nauseosus*)
- 12 • Bitterbrush (*Purshia tridentata*)

13 Bitterbrush and other shrubs that are not established through seeding
14 will be installed as root plugs, in scattered groupings across the
15 restored area. The target number of shrubs on the site is 20 times the
16 number of acres restored. The rooted plugs will be planted to
17 supplement the seed mix if establishment of shrubs falls short of the
18 per-acre target. At a minimum, 30 Bitterbrush root plugs will be
19 planted.
20

21 Rooted stock of native forb species will be installed in shrub-steppe
22 restoration areas. Suggested species include arrowleaf or Carey's
23 balsamroot (*Balsamorhiza sagittata or careyana*), snow buckwheat
24 (*Eriogonum niveum*), lupine (*Lupinus bicolor*), and veined dock
25 (*Rumex venosus*). The total number of rooted forbs to be installed will
26 equal 5 times the total number of acres of shrub-steppe to be restored.
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43 i) Dryland cultivated native grass habitat with a component of native
44 shrubs and forbs will be planted at the Benton County site during the
45 winter dormant season. Sagebrush and forbs will be added to the
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1 seeding mix on portions of the site not at high risk for wind erosion.
2 Wallula agrees to plant no less than 80 acres with sagebrush added to
3 the seed mix. If site review indicates that additional acreage can be
4 planted with a successful outcome and no impact requirements to PM-
5 10, Wallula agrees to increase the sagebrush acreage. The use of rooted
6 stock is not anticipated at this site. Suggested species include:
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- 8 • Bluebunch wheatgrass 'Secar' (*Pseudoroegneria spicata* ssp.
9 *spicata*)
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- 11 • Thickspike wheatgrass 'Schwendimar' (*Agropyron dasystachyum*)
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- 13 • Slender wheatgrass 'Pryor' (*Agropyron trachycaulum*)
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- 15 • Basin wildrye 'Trailhead' (*Elymus cinereus*)
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- 17 • Sherman's big bluegrass (*Poa ampla*)
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- 19 • Sandberg's bluegrass (*Poa secunda*)
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- 21 • Indian ricegrass 'Nezpar' (*Oryzopsis hymenoides*)
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- 23 • Lupine (*Lupinus bicolor*)
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- 25 • Yarrow (*Achillea millefolium*)
26
- 27 • Big sagebrush (*Artemisia tridentata*)
28

29 2. Monitoring And Performance Standards.

30 Wallula will monitor revegetation success and will file written reports with EFSEC
31 and provide copies to WDFW documenting the monitoring activity, results, and
32 implementation of remedial actions. On sites revegetated with native grasses, establishment
33 will be monitored annually for the first three growing seasons following seeding. On the
34 Project site, shrub-steppe habitats planted with shrub and forb stock will be monitored
35 annually for three additional growing seasons. Annual monitoring of weeds, erosion potential
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1 and Project effects at the Project site and the Benton County property will continue through
2 the life of the Project. Once grasses are successfully established on the pipeline lateral rights-
3 of-way, long-term maintenance of those lands can revert to the landowner(s).
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6 Performance standards for sites seeded with native grasses will include measures of
7 both stem density and species diversity. The proposed stem density standard is a minimum of
8 two plants of the seeded species per square foot during the first growing season, and one
9 plant per square foot during the following two growing seasons, as averaged across the
10 reseeded area. The species diversity goal is representation of 80 percent of the species in the
11 seed mix by the third growing season. Areas not meeting these standards will be reseeded
12 and monitored for an additional three years. Once the grasses have achieved the required
13 stem density and species diversity, annual monitoring will be performed to detect areas
14 subject to soil erosion due to loss of plant cover. Areas of bare soil (due to failure of mulch,
15 germination, or seedlings) will be evaluated to identify the cause of the revegetation failure
16 and re-treated until plant cover and soil protection objectives are met.
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29 Rooted stock of shrubs and forbs will be evaluated based on percent survival of
30 plantings by the third growing season after installation. An 80 percent survival rate for
31 shrubs will be the standard. A 40 percent survival rate will be used as the standard for forbs.
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35 Areas not meeting these standards will be re-evaluated individually to determine
36 whether changes in species selection or treatments are appropriate. On sites where protection
37 of soil erosion is the primary objective (pipeline laterals and Benton County property), non-
38 native species may be added to the native species mix in remedial treatments if necessary to
39 achieve soil protection.
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45 On the Project site, establishment of cultivated dryland grass natural habitat with a
46 component of shrub, and forb species is the primary objective. Failure to meet the
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1 revegetation standards at the Project site after five growing seasons will result in the
2 requirement to revise the planting scheme and replant the site or enhance an equivalent
3 amount of shrub-steppe habitat at another site in the vicinity. This determination will be
4 made in consultation with EFSEC and WDFW.
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8 Annual monitoring will include evaluation of plant cover and vitality. In the case
9 that, over the course of Project operation, part of the Project site replanted with vegetation
10 becomes less viable for vegetation due to Project effects (such as cooling tower drift and
11 deposition or on-site spills), Wallula will take action to provide alternative mitigation.
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14 **F. Waterfowl Monitoring Plan**

15 Wallula agrees to develop a Waterfowl Monitoring Plan with WDFW prior to
16 commencement of commercial operations. Phase 1 of the Plan will focus on monitoring
17 activities during the first six months of commercial operations including characterization of
18 brine concentrator reject water and waterfowl use of the ponds. The plan will be designed to
19 determine if the brine concentrator reject water in the lined evaporation ponds has a
20 detrimental effect to wintering waterfowl. The plan will include proposed mitigation
21 measures if such detrimental effects are confirmed.
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24 **G. Other Plans**

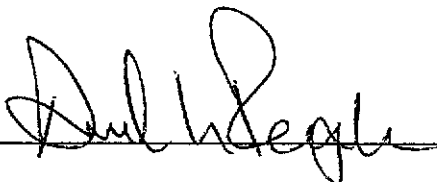
25 Wallula agrees to develop additional plans for natural resources protection under the
26 requirements of EFSEC. Wallula will develop the plans with EFSEC staff and with the
27 participation of WDFW through EFSEC process.
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30 **III. Withdrawal Of Objections**

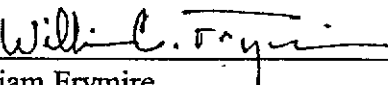
31 Based upon Wallula's commitments herein, WDFW agrees that Wallula's compliance with
32 the terms of this Agreement mitigates the impacts to fish and wildlife resources, including
33 habitat and wetlands. Therefore, based on this Agreement, WDFW stipulates to the
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1 withdrawal of all its issues from the adjudicative hearing unless there is a substantial change
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3 in the proposed project.
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7 DATED: April 21st, 2002.
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12 By 
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14 Attorney for Wallula Generation, LLC
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19 **WASHINGTON ATTORNEY GENERAL**
20
21

22 By 
23 William Frymire
24 Assistant Attorney General
25 Attorney for Washington Department of
26 Fish and Wildlife
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32 *Errata – See EFSEC Council Order No. 769 (Wallula Power Project, No. 2001-
33 01, Prehearing Order No. 3, p. 2)
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35 **Errata – See EFSEC Council Order No. 769 (Wallula Power Project, No. 2001-
36 01, Prehearing Order No. 3, p. 2)
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